In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1303

IVA LEE HIGDON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner pleaded guilty in the United States District Court for the Western District of Oklahoma to being an accessory after the fact (18 U.S.C. 3) to armed robbery of a federally insured bank by her husband, who simultaneously pleaded guilty to that offense (18 USC 2113(d)).[1] After a thorough examination (Pet. App. XI-XVII), the district judge

[1] Petitioner's husband, Tommy Ray Higdon, has filed a separate petition for a writ of certiorari to which we have filed a separate response, No. 6482, this Term.

accepted the pleas and deferred sentencing until after receipt and review of the presentence reports. The judge indicated at the time that he regarded robbery as a serious offense (Pet. App. XVII-XVIII). Thereafter, the judge sentenced petitioner to imprisonment for ten years and her husband to a twenty-year prison term. The court of appeals affirmed *per curiam* (Pet. App. A).

Petitioner contends here, as in the court of appeals, that the trial judge abused his discretion in sentencing her to imprisonment, alleging that the district judge failed to give due weight to the information available to him, including the fact that the prosecutor had stated that he did not oppose probation. The record is plain, however, that the trial judge considered the presentence reports in imposing sentence and there is no showing that he abused his broad sentencing discretion in this case.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1971.

* U. S. GOVERNMENT PRINTING OFFICE: 1971 [illegible]